

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF  
AMERICA, for the use and benefit  
of THYSSENKRUPP  
ELEVATOR CORPORATION,

Plaintiff,

v.

Case No. 2:20-cv-957-JES-NPM

BES DESIGN/BUILD, LLC and AEGIS  
SECURITY INSURANCE COMPANY,

Defendants.

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**ORDER**

Before the Court is Plaintiff's Motion for Entry of Clerk's Default (Doc. 15). Plaintiff requests the Court enter a default against BES Design/Build, LLC for failure to answer within the time allowed by law. For the reasons discussed below, the Court denies the motion without prejudice.

Federal Rule of Civil Procedure 5(a) and (d)(1)(B) require written motions to be served on every party and, if not served via the Court's electronic-filing system, filed with a certificate of service. "Nothing in the text of Rule 55 excuses the service requirement for requests for entry of default (as distinguished from motions for default judgment), and Rule 5(a) on its face requires such service." *PNC Equip. Fin.*,

*LLC v. Taos Ventures, LLC*, No. 5:13-cv-529-OC-PRL, 2014 WL 12625121, \*1 (M.D. Fla. Mar. 21, 2014) (quoting *Capitol Records v. Carmichael*, 508 F. Supp. 2d 1079, 1083 n.1 (S.D. Ala. 2007)); *see also U.S. Bank, N.A. as trustee for LSF8 Master Participation Tr. v. Tobin*, 754 F. App'x 843, 846 (11th Cir. 2018) (affirming default judgment when defendants failed to show they were not served with the motion for clerk's default); *Allstate Ins. Co. v. Airport Mini Mall, LLC*, No. 1:15-CV-1422-AT, 2015 WL 13333577, \*1 (N.D. Ga. Nov. 23, 2015) (denying motion for clerk's default that was not accompanied by a proper certificate of service).

Here, Plaintiff did not file a certificate of service with its Motion for Entry of Clerk's Default, and there is no other indication in the record that Plaintiff served this motion on Defendant. (*See* Doc. 15). Accordingly, the Motion for Entry of Clerk's Default (Doc. 15) is **DENIED without prejudice**.

**DONE** and **ORDERED** in Fort Myers, Florida on January 21, 2021.

  
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NICHOLAS P. MIZELL  
UNITED STATES MAGISTRATE JUDGE